



Flathead Conservation District
133 Interstate Lane, Kalispell, MT 59901
www.flatheadcd.org 406-752-4220

CALL TO ORDER & ATTENDANCE

Chair Ronald Buentemeier called the February 11, 2019, 310-Stream Permit meeting to order at 7:00 P.M. in the conference room.

Board members present:

Ronald Buentemeier, Chair; Pete Woll, Vice Chair; Dean Sirucek, Secretary/Treasurer; Lori Curtis, Supervisor; John Ellis, Supervisor; Verdell Jackson, Supervisor; being a quorum of the Board.

Also, in attendance were Valerie Kurth, Hailey Graf and Ginger Kauffman, FCD staff; Leo Rosenthal and Kenny Breidinger, Montana Fish Wildlife & Parks (FWP); Cameron Wohlschlegel, FH Stoltze L&L; Douglas Peppmeier, TD&H Engineering; Dave Preble, Flathead Electric Cooperative.

MINUTES

Dean Sirucek motioned "to approve the minutes of the January 28, 2109 business meeting as presented." Verdell Jackson seconded. Motion carried unanimously.

CORRESPONDENCE

1. Email: Flathead Audubon newsletter *Pileated Post* <http://www.flatheadaudubon.org>
2. Email: National Association of Conservation Districts (NACD) publications:
Conservation Clips, eResource
See article on how standing rows of corn in fields act as snow fences
<https://www.nwherald.com/2019/01/08/hammer-standing-rows-of-corn-in-fields-help-prevent-snow-ice-from-blowing-onto-roads/aqxnm0y/>
3. Email: The Montana Rangeland Resources Committee and the Rangeland Resource Program at DRNC announces a unique opportunity for 2 students for the summer of 2019. The successful applicants will have the opportunity to spend 2 weeks at each of the 6 host/mentor's ranch operations. This internship is designed to offer beginning agriculturalists, natural resource and range specialists, biologists, soils majors or any student looking into natural resources, the real-world and hands-on experience implementing the educational tools already gained to a ranching operation. This paid internship will last for three months during the 2019 summer where interns will work and learn from mentoring ranchers from across the state of Montana. A wage of \$11/hr. will be paid at the end of each month with room and board supplied by the mentoring/host ranch. Students majoring in any natural resource related field are recommended to apply for this opportunity. Application Deadline is February 1st, 2019. For more information contact Stacey at 406-444-6619, or sbarta@Mt.gov or visit the



web site at <http://dnrc.mt.gov/divisions/cardd/conservation-districts/rangeland-resource-program>

4. Email: Flathead Lakers newsletter *River to Lake* <https://flatheadlakers.org>

Articles included:

Ranching for Rivers Funding Opportunity

The Ranching for Rivers is a cost-share program to help landowners along streams and rivers build fences, stream crossings, and watering systems for livestock, to protect water quality. This program is currently accepting applications. For more information or to apply, contact Samantha Tappenbeck at 406-291-6314 or stappenbeck@macdnet.org, or visit the program's website

Ashley Creek Landowners

Ashley Creek is listed as impaired by the Montana DEQ. Because it is listed, there is state and local funding available to help landowners make improvements to the creek. If you would like more information about fencing or restoring streamside riparian vegetation along Ashley Creek, please Contact Constanza von der Pahlen, criticallands@flatheadlakers.org. Watch the River Steward Program video to learn more about protecting and improving water quality in streams.

5. Email: Whitefish Planning Board meeting, Thursday, February 21, 6:00 P.M., Whitefish City Council Chambers www.cityofwhitefish.org
6. Email: The Montana Department of Environmental Quality announces the availability of funding to address nonpoint source pollution, under the 2019 Interim Call for Applications. Applications due by 2 p.m., Friday, March 15, 2019. Contact Dean Yashan, 406-444-5317, dyashan@mt.gov or visit <http://deq.mt.gov/Water/SurfaceWater/NonpointSources>
7. Email: Montana Fish Wildlife & Parks (FWP) has released the 2018 Watercraft Inspection Station Annual Report. FWP and inspection partners checked more than 109,000 water craft, the most inspections conducted since the program started in 2004. Inspectors intercepted 16 out-of-state boats with mussels attached. Standing water in bilges and live wells was the most common reason a boat failed an inspection. <http://cleandraindry.mt.gov/Watercraft-Inspections>
8. Email: Soil & Water Conservation Districts of Montana (SWCDM) February 26, 2019 issue of *The Montana Conservationist* www.swcdm.org
See article on how prairie strips transform farmland conservation
9. Email: Montana Watershed Coordination Council *Watershed News* <https://mtwatersheds.org>

FINANCIAL

The following bills were reviewed:

1. Byte Savvy \$55.00
2. Flathead Beacon \$528.00
3. Susan D. Hulslander, CPA \$241.00
4. VISA \$918.31

John Ellis motioned “to approve the bills as presented.” Verdell Jackson seconded. Motion carried unanimously.



PUBLIC COMMENT PERIOD

No one was present to comment on items not listed on the agenda.

310

FH Stoltze L&L, FL2019008, S. Fork Canyon Creek, channel alteration: Ronald Buentemeier explained that Stoltze has applied for and received this permit for many years. In July, they will divert water from the South Fork of Canyon Creek to Trumbull Creek. In late fall, the diversion will be removed. Ronald noted that he did not need to do an onsite inspection as he has been there many times. Kenny Breidinger stated he also did not need to see the site this year, but suggested they visit it sometime in the next year or two.

Ronald Buentemeier motioned “to approve the application as submitted.” Lori Curtis seconded. Motion carried unanimously. The onsite inspection was waived with concurrence by Fish, Wildlife & Parks.

FH Stoltze L&L, FL2019009, Various streams, annual road maintenance/bank stabilization: Ronald Buentemeier stated the application is for annual road maintenance and bank stabilization. Stoltze contacts the office several days prior to doing any work. They have held this permit for many years, but no work was required last year. Kenny Breidinger stated that, similar to previous years, he is ok with everything in the application except for extending culverts.

John Ellis motioned “to approve the application with modifications; extension of culverts is excluded.” Dean Sirucek seconded. Motion carried unanimously. The onsite inspection was waived with concurrence by Fish Wildlife & Parks.

GNP, FL2019005, Unnamed stream, utilities: Ronald Buentemeier stated Flathead Electric Cooperative is applying to bore a utility line under the stream to provide electrical power to private properties in Glacier National Park. The bore pit will be more than 20 feet from each side of the creek and the line will be more than 5 feet below the bottom of the stream. Dean Sirucek asked if a map showing the locations was submitted. Leo Rosenthal stated yes, the creeks are all unnamed tributaries to Lake McDonald. John Ellis asked if the sites were at the top end of the lake. Leo thought they were based on the map provided.

Ronald Buentemeier motioned “to approve the application as submitted.” Lori Curtis seconded. Motion carried unanimously. The onsite inspection was waived with concurrence by Fish Wildlife & Parks.

GNP, FL2019006, Unnamed stream, utilities: Ronald Buentemeier stated Flathead Electric Cooperative is applying to bore a utility line under the stream to provide electrical power to private properties. The bore pit will be more than 20 feet from each side of the creek and the line will be more than 5 feet below the bottom of the stream. Dean Sirucek asked if a map showing the locations was submitted. Leo Rosenthal stated yes, the creeks are all unnamed tributaries to Lake McDonald. John Ellis asked if the sites were at the top end of the lake. Leo thought they were based on the map provided.



Ronald Buentemeier motioned “to approve the application as submitted.” Lori Curtis seconded. Motion carried unanimously. Fish Wildlife & Parks waived the onsite inspection.

GNP, FL2019007, Unnamed stream, utilities: Ronald Buentemeier stated Flathead Electric Cooperative is applying to bore a utility line under the stream to provide electrical power to private properties. The bore pit will be more than 20 feet from each side of the creek and the line will be more than 5 feet below the bottom of the stream. Dean Sirucek asked if a map showing the locations was submitted. Leo Rosenthal stated yes, the creeks are all unnamed tributaries to Lake McDonald. John Ellis asked if the sites were at the top end of the lake. Leo thought they were based on the map provided.

Ronald Buentemeier motioned “to approve the application as submitted.” Lori Curtis seconded. Motion carried unanimously. Fish Wildlife & Parks waived the onsite inspection.

Hogan, FL2019004, Rose Creek, utilities/well/excavation, structures: Pete Woll stated an onsite inspection needs to be scheduled, however current snow conditions will not allow us to adequately view the site and assess the proposed project.

Pete Woll motioned “to table until the March 310-meeting.” Lori Curtis seconded. Motion carried unanimously.

Ronald Buentemeier asked what the application was for. Pete responded the application lists septic systems, three houses, and utilities. Hailey Graf noted that she had talked with the applicant on the phone about his application. He mentioned putting gravel into the slough, but he did not think the slough was under 310-jurisdiction, so did not include it in the application. Dean Sirucek asked how close the projects are to the water. Pete offered to show him the map and he noted the application also includes water well cistern, excavation pit, new residential structure, commercial structure, utilities, then on the drawing there are three houses. Kenny Breidinger added that two of them are tiny houses. Pete concluded the discussion by stating we will need to see the site and talk about all this on the ground.

Juno, FL2018034C, Walker Creek, complaint (tabled): Ronald Buentemeier explained that the landowner has a 310-permit and is waiting for a floodplain permit. This remains tabled until the Work Completion form is submitted to the district office.

Krost, FL2018070C, Stillwater River, complaint: Verdell Jackson explained the last onsite inspection was cancelled due to weather and the site is currently covered in snow.

Verdell Jackson motioned “to table until the March 310-meeting.” John Ellis seconded. Motion carried unanimously.



Morton, FL2018044C, Whitefish River, complaint: Ronald Buentemeier stated the complaint is for a trail built along the river. Valerie Kurth provided background for the board about a meeting that was held with representatives from the City of Whitefish, including the City Manager, Director of Public Works, City Engineer, and Senior Planner, and several representatives from Flathead CD and Fish, Wildlife & Parks, Ronald, Lori Curtis, John Ellis, Kenny Breidinger, and Valerie. She stated that the meeting was intended as an educational discussion on 310-permits vs 124-permits and their respective requirements. She contacted Craig Workman and Adam Hammatt prior to tonight's meeting, but no one from the City is present. However, the engineer for the project, Doug Peppmeier, is here.

Kenny Breidinger stated he had talked to his supervisor at Fish Wildlife & Parks (FWP) about this, and FWP feels this situation is under 310, not 124, jurisdiction. Kenny said he also discussed this with Don MacIntyre, DNRC contract attorney for conservation districts, and Don agreed that it was a 310. When we met with representatives from the City of Whitefish, they seemed like they wanted to have a say in the permitting authority, but, from the perspective of FWP, it is a 310 violation. Kenny continued that he would like to see an after-the-fact application with details about the project. Then he asked what the supervisors thought about which type of permit application should be requested.

Pete Woll asked about the handout in the meeting folders. Valerie explained she had condensed information from Don and others regarding this situation. She noted that Don concluded this is a 310.

Ronald stated that he thinks the main point is if it is determined to be a 310-permit, then it must conform to our Adopted Rules. The way the trail was built does not conform and would not stand up in court. Kenny stated he agreed that it violated parts of the Adopted Rules, but he would still like to see an after-the-fact application so we can see the details of how it was built. He did not recommend having anyone tear the trail out, but felt it was important to see an after-the-fact permit and then focus on how to permit future trails downstream.

Doug Peppmeier, from TD&H Engineering, introduced himself and explained his firm's perspective. They followed all the requirements set forth by the City of Whitefish in the building of the trail. The trail had to connect to an existing trail on one end, and there are two future sections that will be built soon. He expressed frustration with the situation and willingness to work with the District in the future.

John Ellis asked Doug if the City approved the plans design and construction of this project. Doug responded yes. John then asked which situation it was; did the City approve the plans and design, or did the city require the pathway as part of the approval of the development, but the planning design and construction were left up to you. Doug stated it is both because the preliminary plat under the condition of approval was to build the path, then we designed it and submitted it to the City, then it was approved by the City. John told Doug that he cannot avoid his responsibility by putting it on the City. Whenever your client does activities near a stream, it is his responsibility to get a permit. John stated that he is a member of the Whitefish Planning Board and when the Idaho Timber and River View Apartments came up for review, he told them they needed a 310-permit.



Dean Sirucek asked for clarification about John's first question. Doug explained the general process: the subdivision developer has their concept, we meet with Planning & Zoning, then criteria are developed, and, finally, conditions of approval. After the preliminary plat is approved, they have three years to complete the final design and build. The final design documents are circulated through agencies for comment, and the City reviews and approves it. In this case, at the final plat stage, the City took over the maintenance of the path.

Ronald asked when the City Council and Mayor review the project. Doug explained that they vote to approve the preliminary plat, and then they sign the final plat. The Mayor signs the final plat. The most intense review is by Planning & Zoning. Doug also explained that the Mayor signs an ordinance after the preliminary plat is approved, but before the final design. Ronald asked how much the final design can vary from the preliminary plat. Doug explained that if they make any changes, they meet with the Planning Department. If it is considered a substantial change, then they would have to go through the process again.

Ronald asked John about the upcoming trail projects. John explained that there are two: Riverview Apartments at the site of the old hospital, and Idaho Timber. He said that both went through the planning board, and he had added a 310-permit as a condition of approval.

The board continued to discuss how to reconcile the Adopted Rules with future trail segments along the Whitefish River. Several people agreed that we need to ensure they are placed away from the immediate bank of the river, but Ronald was concerned that the City would want the trail to go below the bank, at least in some places. Doug agreed that this might be difficult; for example, the perceived top of the bank at the Idaho Timber site is composed of wood chips, which will have to be removed. Hailey clarified to Doug that the board determines 310-jurisdiction, not the applicant. Pete Woll added that we need to have an application before making a determination. Ronald came back to his concern over allowing the current and future trails to be built below the top of the bank, especially because of the irrigation system, which may saturate the soil and lead to bank failure.

Kenny agreed with Ronald and repeated that we are not going to make anyone rip out the trail. But once we have an application, we can study it and see if there are some reasonable changes that can be made. Modifying the irrigation system is something that is probably more palatable than removing trails. He felt this would be up to the board's discretion. Ronald responded that the public may have a different opinion about the trail location if it is built above the top of the bank. John suggested the board determine if we have jurisdiction over this complaint so we can move on.

Pete Woll stated that he had listened to the discussion and read the documentation, and his opinion was the complaint is in our jurisdiction and we should request an after-the-fact permit application. Then we will most likely approve the permit and not require them to remove the trail. But, in the permit, we need to document that if this trail had not already been constructed, certain components of it would not meet our Adopted Rules and will not be accepted in the future. Then we have documentation for the future trails. Dean suggested going even further by asking the Flathead County Attorney to send a letter to the Whitefish



City Council that documents what occurred and what needs to happen in future instances. He felt it would carry more weight if it came from the County Attorney rather than the Flathead CD.

Lori Curtis agreed with Pete's suggestion, but she was not sure a letter from the County Attorney was appropriate. Regardless, she felt this board should send a letter to the City Council and the Mayor. The board continued to discuss the City's responsibility in future trail scenarios, in regard to both 124 and 310 permits. Lori felt that the City would handle these situations differently in the future, but they need to know that this situation was a violation of Montana's Natural Streambed and Land Preservation Act. Leo Rosenthal concurred and added that the City has put a lot of effort into water quality issues in recent years, so they should be receptive to the intent of the law.

Lori Curtis motioned "FL2018044C is within the jurisdiction of the Flathead CD and is in violation of our Adopted Rules." Dean Sirucek seconded.

Ronald asked if there was any further discussion. John stated that he would agree with the motion because the project was done on private property by the developer, but he then read the information from Donald MacIntyre dated 10/16/18 and concluded that it is a 124. Lori stated that this was only part of the review. As you continue reading, on 10/25/18, Don states that "while there is information to support jurisdiction under either the 310-Law or the 124-Law, I believe that considering the totality of the availability of information the construction of the trail does fall under the jurisdiction of the 310-law rather than the 124-law." Valerie added clarification that the 10/16/18 email is mainly general information about 310 vs 124 permits, and the 10/15/18 email contains a more thorough review.

Motion carried with one no vote.

Lori Curtis motioned "to request an after-the-fact permit application to be submitted." Dean Sirucek seconded.

Leo wondered what specific information should be included in the application. Lori stated it should have all the requirements of a normal applications, such as design drawings and material specifications. Ronald stated that they should submit the as-built plans, because preliminary plans can change.

Lori motioned "to amend the motion to add - and to include as-built plans." Dean Sirucek seconded the amendment. Ronald asked if there was any further discussion.

John asked if we have a form letter we send when a violation has been found. Ginger Kauffman responded we do. John then asked if it tells the violator they are required to get a permit. Ginger replied if it is the motion. Motion carried unanimously.

Ronald noted that he will sign the letter. Pete asked if the after-the-fact application would be coming from Doug at TD&H. Doug replied yes, and then asked how the situation will be conveyed to the City of Whitefish Planning Department and other parties involved. Ronald



explained that the letter will be sent to the landowner, and copies will be sent to the complainant, FW&P, TD&H, the Whitefish City Manager, and Mayor.

Doug asked about the permitting graphic for the joint application on the DNRC website. He expressed frustration with it because it led him and his colleagues to think that as long as they stayed above the floodplain, they did not need to worry about other permits. The board and district staff agreed that the graphic can be misconstrued. Hailey stated that we recently changed the graphic on the Flathead CD website because this is not the first time that this has been an issue. But, regardless, it is still the landowner's responsibility to contact each individual agency about their permitting requirements. Pete asked Doug if he would look at our website and offer feedback. Hailey reiterated that we have a lot of 310 information on the website and we are trying to be as proactive as possible. Valerie clarified that it is the Flathead CD website, not DNRC's website, and Lori suggested contacting DNRC about the graphic. Ronald added that each conservation district has their own rules, so you cannot rely on DNRC for all the permitting information. Doug said he would put the after-the-fact application together and submit it.

John asked Doug for suggestions of conferences or meetings of engineers that would benefit from learning more about 310-permitting. Doug suggested several statewide conferences. The board thanked Doug for attending the meeting.

NW Dev. Group, FL2019003, Trumbull Creek, culvert/wetland alt/utilities: Ronald Buentemeier explained he and Kenny Breidinger, along with Kevin Malloy, of Carver Engineering, went on the onsite inspection. The project is just past Rose Crossing where several developments are located. They will install two 36" culverts with space between them. The space will be covered by manufactured metal and will not be open, which is a new design for double culverts. Dean Sirucek asked if it was a type of an arch connection. Ronald replied yes, it will be one plate. Kenny agreed and added that it goes down into the streambed as well. Pete Woll asked if fill material will be placed between the pipes, and Ronald confirmed that fill material would be packed in between. Ronald went on to explain that a very small amount of water was flowing when they visited, and the work will be done during low flow in late summer. Dean asked for clarification on the project location, which Ronald provided. Ronald thought the application looked okay as submitted, and Kenny agreed that it seemed like a standard crossing. Kenny added that it is low in the drainage and the plate design has the potential to work well. Kenny also recommended approving it as proposed. Leo Rosenthal asked if they were worried about beavers plugging up the pipes as opposed to a single span-type of structure. Ronald did not think there was beaver activity in that section of the stream. Kenny clarified that the two pipes are actually 54" in diameter and the creek is low gradient so very little bedload is conveyed. Ronald reviewed the considerations in the Team Member Report. Kenny noted that the channel jogs to the left just downstream of the pipes, so there will probably be some erosion there.

Ronald Buentemeier motioned "to approve the application as submitted." Dean Sirucek seconded. Motion carried unanimously.

Stalowy, FL2019002, Bear Creek, tree removal: Ronald Buentemeier stated that he, Pete Woll, Mr. & Mrs. Stalowy, Hailey Graf, and Leo Rosenthal attended the onsite inspection. He



explained that there are many dead and dying trees, as well as other debris, along the east side of Beaver Pond that the Stalowy's would like to remove. The project area is elevated and there was no evidence of water inundation. There did not appear to be merchantable timber at the site, and Mr. Stalowy will salvage the harvested material for firewood. He will use a grinder on his skid steer to grind up debris and compost it back into the ground. There are 3-5 trees leaning towards the pond that he could also cut down and remove. Hailey Graf added that he is planning to replant new trees and do the work while the ground is still frozen. Ronald noted that the termination date is March 30, 2019 so he gets the work done. Pete Woll noted that Mr. Stalowy had the DNRC service forester visit the site.

Ronald Buentemeier motioned "to approve the application with modifications and per the Team Member Report. The 15-day waiting period is waived." Lori Curtis seconded. Motion carried unanimously.

OTHER 310'S

Nielsen, FL2017036, Stillwater River, culvert: Kenny Breidinger stated he had received a copy of a Follow-Up Inspection for Nielsen and noticed that the applicant had placed a screen (hog wire) over the end of the culvert. This will actually "catch" debris and cause plugging. Ronald Buentemeier asked if the landowner had trouble with beaver or martin. Kenny stated he did not see any sign of beaver. The screen was placed only on one side of the culvert. Kenny passed the Follow-Up Inspection around. Verdell Jackson had done the inspection, so Ronald asked him if he had noticed the screen. Verdell responded that he had seen it, but he did not think it would be a problem because it would keep a tree from getting lodged in the culvert. The board and Kenny discussed the possible problems with the screen and noted that it was not part of the original application. Pete Woll suggested we send the landowner a letter stating that after the follow-up inspection, we noticed the wire screen over the pipe and ask him to either remove it or apply for an amended permit.

Ronald asked if this situation was an emergency. Verdell stated no and there was very little water present. Ronald stated if it is not an emergency, we should put this on the February business meeting agenda.

NEW BUSINESS

RRGL Hearing: Valerie Kurth stated that the hearing went very well, and she was glad they attended, especially after seeing that some of the other projects that had no representative. Also, both engineers came and were able to answer questions about floodplain permitting. Valerie noted that the phone poll for travel just needs to be approved.

Lori Curtis motioned "to approve the 1/28/19 phone poll for Valerie Kurth and Hailey Graf to travel to Helena for the RRGL grant applications (Trumbull Creek & Krause Creek) hearing on 1/30/2019." Dean Sirucek seconded. Motion carried unanimously



MATTERS OF THE BOARD/STAFF

Legislative Issues:

Lori Curtis noted that over 30 people came to the legislative hearing in Helena to support funding in the DNRC budget for conservation districts. Leo Rosenthal stated that Montana Association of Conservation Districts (MACD) also supported restoring funds to the fisheries budget during their hearing. He thought it was good for MACD to inform legislators that this funding is critically to upholding the 310 Law.

Valerie Kurth supplied copies of proposed HB 383 and HB 399, and stated that HB 383 Section 75-7-112, MCA is being proposed to read: (b) When an applicant that has not agreed to arbitration under 75-7-111 disagrees with the supervisors’ decision, the applicant shall, within ~~15~~ 60 working days of receipt of the supervisors’ decision (i) agree to arbitration...

Valerie went on to explain that HB 399 has a lot of potential ramifications as it is defining a natural perennial flowing stream. “Natural, perennial-flowing stream” or “stream” means a stream or river that has flowed continuously during all seasons during dry as well as wet years, except when the flow is interrupted by diversion.

The board discussed the potential background and difficulties associated with both bills. Valerie stated that Dan McGowan will be meeting with the bills’ sponsor, Representative Kerry White (Bozeman), and DNRC representatives, Laurie Zeller and Mark Bostrom, to try to better understand the bills’ intentions. He also requested input from districts on potential consequences.

John Ellis motioned “the Flathead Conservation District opposes HB 399.” Lori Curtis seconded. Motion carried unanimously. Valerie will contact Dan at MACD.

The next business meeting is scheduled for Monday, February 25, 2019, 7:00 P.M. in the conference room of the USDA building at 133 Interstate Lane, Kalispell.

Adjournment: John Ellis motioned “to adjourn.” Verdell Jackson seconded. Motion carried unanimously. As there was no further business, the meeting was adjourned at 8:50 P.M.

Submitted By:

Ginger Kauffman
Administrator

Valerie Kurth, Ph.D.
Resource Conservationist

Minutes approved by FCD Board motion made on:

2/25/2019	Ronald Buentemeier	Chair
(Date)	(Signature)	(Title - Chair etc.)

